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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION NO. 638 OF THE UNITED STATES AND CANADA, AFL-CIO, *Respondent*.

## MEMORANDUM OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## MOTION FOR LEAVE TO SUBMIT MEMORANDUM AS AN *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable, the Justices of the United States Supreme Court:

The Chamber of Commerce of the United States of America ("the Chamber") respectfully moves the Court to grant it leave to file the attached Memorandum which it herewith lodges with this Court. In support whereof, the Chamber states:

1. This case presents an issue of national importance in the administration of the National Labor Relations Act: the validity of the Board's "control" doctrine as applied to determine whether an employer subjected to alleged illegal secondary boycott pressures by a union, is a neutral, and therefore protected from such coercion by Section 8(b)(4)(B) of the Act, as amended, 29 U.S.C. 158(b)(4)(B).

2. The Chamber, as the nation's largest association of employers,* frequently participates as an *amicus curiae* in cases of national impact even when individual employers are also party to the lawsuit. See, *e.g.*, cases cited p. 2, *infra*. Here, however, the employer interests are not adequately represented. None of the party-employers have participated in the litigation before the Court of Appeals. Accordingly, the Chamber's participation will fill the void left by this absence.

3. The issues in this case are of major importance to the Chamber's members, many of whom are actively engaged in the construction industry or are users of services provided by construction concerns. These members are directly affected by the scope of permissible pressures labor organizations may direct against contractors at jobsites to enforce product boycotts under so-called "work preservation" agreements. The Chamber is thus vitally concerned that it have an op-

* The Chamber of Commerce of the United States of America is a federation consisting of a membership of over thirty-seven hundred (3,700) state and local chambers of commerce and professional and trade associations, a direct business membership in excess of fifty-two thousand (52,000), and an underlying membership of approximately five million (5,000,000) business firms and individuals.



portunity to represent these affected interests before the Court. Otherwise the views of the employers affected by the Union's pressures in this case as well as the views of American industry will be unrepresented in this proceeding. And the broad membership interests represented by the Chamber places it in a position to bring considerations to the Court's attention which might not be advanced by the particular parties to this litigation.

4. The Chamber has participated in the instant case as an *amicus* in the Court of Appeals.

WHEREFORE, the Chamber prays the Court to grant it leave to file the following Memorandum as *amicus curiae* in the above captioned case.

Respectfully submitted,

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### INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America is a federation consisting of a membership of over thirty-seven hundred (3,700) state and local chambers of commerce and professional and trade associa-

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* This Memorandum is filed contingent upon the Court's granting the accompanying Motion for Leave to Submit, *infra*.

tions, a direct business membership in excess of fifty-two thousand (52,000), and an underlying membership of approximately five million (5,000,000) business firms and individuals. It is the largest association of business and professional organizations in the United States.

In order to represent its members' views on questions of importance to their vital interests and to render such assistance as it can to the Court's deliberations in such areas, the Chamber has frequently participated as *amicus curiae* in a wide range of significant labor relation matters before the Court. *E.g., Connell Constr. Co.* v. *Pumbers, Local 100,* 421 U.S. 616 (1975); *William E. Arnold Co.* v. *Carpenters,* 417 U.S. 12 (1974); *Super Tire Engin. Co.* v. *McCorkle,* 416 U.S. 115 (1974); *Boys Markets* v. *Retail Clerks,* 398 U.S. 235 (1970); *Porter Co.* v. *N.L.R.B.,* 397 U.S. 99 (1970).

There are issues in this case that are of major importance to the Chamber's members, many of whom are actively engaged in the construction industry or are users of services provided by construction concerns. The issues posed herein, which include the validity of the Labor Board's so-called "control test" as the decisive factor separating primary and secondary conduct under Section 8(b)(4)(B) of the National Labor Relations Act (29 USC § 158(b)(4)(B)), are of immediate concern to the Chamber's members. These members are directly affected by the scope of permissible pressures labor organizations may direct against contractors at jobsites to enforce product boycotts under so-called "work preservation" agreements. The Chamber is thus vitally concerned that it have an opportunity to represent these affected interests before the Court. Otherwise the views of the employers affected by the Union's pressures in this case as well as the views of American industry will be unrepresented in this proceeding. And the broad membership interests represented by the Chamber places it in a position to bring considerations to the Court's attention which might not be advanced by the particular parties to this litigation.



## STATEMENT

### I. The Board's Findings of Fact

The Austin Company, Inc., of Roselle, New Jersey ("Austin") was engaged as the general contractor for construction of the Norwegian Christian Home for the Aged in Brooklyn, New York. 204 NLRB at 760, 762.[1] Austin has no contract with Plumbers, Local 638 ("the Union") and does not employ plumbers or steamfitters. 204 NLRB at 762. Austin was also hired to engineer all job specifications for this construction project. 204 NLRB at 760, 762. These specifications included one requiring the installation of certain combination cooling and heating units to be manufactured by Slant/Fin Corporation of Greenvale, New York ("Slant/Fin").[2] The units, after purchase by Austin, carry a

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[1] The Decision and Order of the National Labor Relations Board is reported at 204 NLRB 760. The *en banc* decision of the Court of Appeals is reported at 521 F.2d 885. The petitioner invokes the jurisdiction of the Court under 28 U.S.C. § 1254(1).

[2] This specification provided in relevant part:

> Furnish at the jobsote Slant/Fin Climate Command Air Conditioners. The unit shall be complete with cabinets, filters, cooling chasis, heating coil fans, main water flow and condensate assembly . . . .
>
> • • •
>
> The main flow and condensate assembly shall be factory installed as an integral part of the unit by the manufacturer . . . .

one-year guarantee if the internal piping in them is fabricated at the factory by Slant/Fin. 204 NLRB at 762. Slant/Fin has no contractual or other relationship with the Union, and it is uncontested that the Union has never sought a contract with Slant/Fin or attempted to organize Slant/Fin's employees. 204 NLRB at 763.

Following the submission of competitive bids, Austin, on January 14, 1972, awarded the heating, cooling and ventilation work on the Norwegian project to Hudik-Ross Co., Inc. ("Hudik"). 204 NLRB at 760, 762. This work included installation of 114 Slant/Fin heating-cooling units purchased by Austin, and the Board found that Hudik "was aware that the units it was to install contained internal piping that had already been cut and threaded." 204 NLRB at 760. Hudik is party to a collective bargaining agreement with the Union which includes "Rule IX." This provision provides in pertinent part (204 NLRB at 762):

> Radiator branches, converter branches and coil connections shall be cut and threaded by hand on the job . . .

Shortly after the Slant/Fin units were delivered to the jobsite on June 22, 1972, Union business agent William B. Daly informed Frank Hudik, President of Hudik, the units would not be installed because the piping inside the units was steamfitters work. Daly contended Rule IX required internal piping in the units to be cut and threaded on the job. 204 NLRB at 762. Frank Hudik told Daly these units were "part and

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* * *

Manufacturer shall furnish a written guarantee for a period of one year after completion of installation . . . .



parcel of the plans and specifications," that Hudik "had no choice in the matter," and that Hudik "did not buy this equipment." 204 NLRB at 762. Daly also told Austin's project superintendent, Plath, that Hudik's employees would not install the units. 204 NLRB at 760, 762 .The Union continued to refuse to permit Hudik's employees, who are members of the Union, to install the units, and at frequent intervals until at least September 1972, Union steward Zimmerman told Plath that Hudik's employees "were still under instructions from the Union not to install the Slant/Fin units." 204 NLRB at 763. As of the time of the unfair labor practice hearing on November 15, 1972, the Union still refused to install these units.

### II. The Board's Decision and Order

The Board concluded that the object of the Union's work stoppage was either to force "a change in Austin's manner of doing business or [to force] Hudik to terminate its subcontract with Austin." 204 NLRB at 760. Since Hudik could not reassign the completed thread work to its employees and thus was powerless to meet or satisfy the Union's demands, the Board applied its so-called control doctrine to conclude that the Union's coercive pressure was not lawful primary activity. Rather, this conduct was undertaken for its effect on other neutral employers like Austin whose specification practices were inconsistent with the Union's interests.

The Board noted that the Union did not limit the focus of its conduct to the primary employer (Hudik). The Union directly and repeatedly informed Austin that "it would not let Hudik install [Slant/Fin] units involved." 204 NLRB at 760. Accordingly, the Board

held the Union's work stoppage was a secondary boycott which violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act.[3]

The Board's order requires the Union to cease inducing or encouraging any individual employed by Hudik or any other person engaged in an industry affecting commerce to strike or refuse in the course of their employment to handle or work on factory piped heating and cooling units or related products when Hudik or such other person is required by contract to use such products, or to threaten to do so, where an object is to compel Hudik or such other person to cease using such products or to cease doing business with Austin or Slant/Fin. 204 NLRB at 766. Affirmatively, the Union is required to withdraw and rescind all directions or appeals to Hudik's employees to refuse to handle Slant/Fin units, and post the customary notices. 204 NLRB at 766.

### III. The *En Banc* Decision of the Court of Appeals

Sitting *en banc* and with four circuit judges dissenting, the Court of Appeals remanded the case for further proceedings. The majority opinion disagreed with the Board's legal analysis and its factual finding. The majority considered the Board's control standard to be a *per se* test, incompatible as a matter of law with this Court's interpretation of Section 8(b)(4)(B) in *National Woodwork Mfrs. Assn.* v. *NLRB*, 386 U.S. 612 (1967). The majority stated (521 F.2d at 903): "We do not think that an employer who is struck by his own employees [to enforce a valid work preservation clause] can ever be considered a neutral bystander

[3] This statutory provision, along with Section 8(e) of the Act, is set forth in the Appendix attached to this Memorandum.



in a dispute not his own." With respect to the Board's factual findings, the majority concluded (521 F.2d at 903) the Union's work stoppage did not itself "[indicate] that the substance of the dispute was with a third party." The majority minimized the Union's contract with Austin's jobsite representative, labeling this "single occasion," as "no more than [what] Hudik should have done. . ." 521 F.2d at 900 n.36.[4]

The four dissenting circuit judges disputed both the majorities view of the scope of *National Woodwork* and the ruling that the Board had determined the legality of the Union's work stoppage solely by reference to Hudik's inability to reassign the disputed work to its employees. The dissenters emphasized (521 F.2d at 918) the Board's finding that "the Union had immediately and specifically informed Austin, the general contractor, who did not have a contract with or employ any member of the Union, that it would not permit Hudik to install the air-conditioning units." The dissenters considered this fact and other surrounding circumstances weighed by the Law Judge, such as the general-subcontractor relationship in the construction industry, and the unavailability of non-union labor in New York City, to provide an ample basis for the Board's unlawful secondary boycott finding. 521 F.2d at 937. This conclusion was well within and properly applied the Court's "surrounding circumstances" analysis formulated in *National Woodwork, supra,* 386 U.S. at 644 to the facts of this case. Since *National*

[4] Chief Judge Bazelon concurred in the majority opinion, noting he was unwilling to accept the Board's judgment that where the pressured employer can not accommodate the union's demands, the union is actually using a pressured employer in a dispute with another employer whose work assignment policies are inconsistent with the union's interest. 521 F.2d at 908.

*Woodwork* considered only a primary boycott, the dissenters further concluded that a secondary boycott undertaken to enforce a work preservation clause was not privileged by this decision. 521 F.2d at 939.

**REASONS FOR GRANTING THE WRIT**

1. This case presents an important and significant statutory interpretation question involving the secondary boycott provisions of the National Labor Relations Act (29 U.S.C. 158(b)(4)). That is when and under what circumstances an employer can be considered to be a "neutral" in a labor dispute and thereby protected from coercive union pressures by these statutory provisions. Section 8(b)(4)(B) bans the "secondary boycott" while concurrently permitting pressures against employers in primary labor disputes. "Thus there are two threads to § 8(b)(4)(B) that require disputed conduct to be classified as either 'primary' or 'secondary.' And the tapestry that has been woven in classifiying such conduct is among the labor law's most intricate." *NLRB* v. *Local 825, Operating Engineers,* 400 U.S. 297, 303 (1971). The statutory language itself suggests no criteria for distinguishing between legitimate primary and unlawful secondary conduct, but "[h]owever difficult the drawing of lines more nice than obvious, the statute compels the task." *Local 761, Elec. Wkrs.* v. *NLRB,* 366 U.S. 667, 674 (1961).

To draw these difficult lines, the Board, in conformity with legislative history,[5] has gradually evolved the so-called control doctrine. Under this formula union pressures to secure compliance with a so-called work

[5] H.R. Rep. No. 245, 80th Cong. 1st Sess. 23 (1947). See also *Deanglo & Local Union 98,* 121 NLRB 676 (1958).



preservation clause are presumed primary and thus lawful, absent other evidence of unlawful object, if the pressured contractor has a collective bargaining agreement with the pressuring union or has the authority or "control" to assign the disputed work to conform to the union's demands. This presumption is based upon the settled legal principle that the pressuring union may be held accountable for the foreseeable consequences of its conduct,[6] and when its pressure is applied to an employer whose only realistic option is to cease doing business with another employer, it is reasonable to conclude that it is this unlawful consequence which the union intends. See, *e.g., Carpenters, Local 112 (Summit Valley Inds. Inc.),* 217 NLRB No. 129 (1975) (review petitions pending 9th Cir.) (Nos. 75-2064, 2166, 2770).

The Board's judgment that these factors may properly be given controlling weight under this statutory provision is an appropriate exercise of the Board's authority derived from Congress in Sections 1, 3(a), and 10 of the Act to apply and interpret the Act in a manner which strikes a proper balance between conflicting legitimate interests. Cf. *NLRB* v. *Weingarten, Inc.,* 420 U.S. 251, 266-7 (1975); *Linden Lumber* v. *NLRB,* 419 U.S. 301, 309-10 (1974); *NLRB* v. *Truck Drivers, Local 449,* 359 U.S. 87, 96-7 (1957). This is particularly true with respect to the arcane secondary boycott provisions of the Act which provide the Board little guidance to determine when union pressures ostensibly directed at a primary employer are actually intended to force neutral employers to change or abandon business methods which are incompatible with union interests. The Court has consistently approved the Board's judgments in this intricate

[6] *Radio Officers' Union* v. *NLRB,* 347 U.S. 17, 45 (1954).

and complex area. See *Carpenters, Local 1976* v. *NLRB*, 357 U.S. 93, 107 (1958); *Local 761, Elec. Wkrs.* v. *NLRB, supra*, 366 U.S. at 680; *NLRB* v. *Local 825, Operating Engineers, supra*, 400 U.S. at 304. Here, the Court of Appeals erred in substituting its judgment for that of the Board with respect to the appropriate standard for measuring the legality of union conduct within the scope of Section 8(b)(4)(B). Compare *Kennecott Copper Co.* v. *EPA*, 462 F.2d 846, 849 (D.C. Cir. 1972); *Braniff Airways, Inc.* v. *CAB*, 379 F.2d 453, 463 (D.C. Cir. 1967); *NLRB* v. *Directors Guild of America*, 494 F.2d 692 (9th Cir. 1974).

2. The Court of Appeals held that the Board's control doctrine was also inconsistent with the Court's interpretation of Section 8(b)(4)(B) set forth in *National Woodwork, supra*. 521 F.2d at 888-89. The Court of Appeals' reading of this decision conflicts with recent decisions of two other circuit courts. In *George Koch Sons, Inc.* v. *NLRB*, 490 F.2d 323 (1973), the Fourth Circuit upheld the Board's application of the control doctrine to preclude a union from striking an employer bound by the union's contract to enforce a valid work preservation clause. The court specifically rejected the same contentions with respect to *National Woodwork, supra*, which the Court of Appeals accepted in the instant case. The unanimous Fourth Circuit panel stated (490 F.2d at 327):

> *National Woodwork* did not scuttle the "right-to-control" test for, obviously, the point was not before the Court. 386 U.S. at 616-17, fn. 3, 87 S.Ct. 1250. Nor does the Board presently write in disregard of *National Woodwork*. Rather, it reads that decision for what it is, a delineation of that degree of proof which establishes a permissible primary boycott but falls short of evidencing the interdicted secondary boycott.



In *Associated General Contractors of Cal., Inc.* v. *NLRB*, 514 F2d 433 (1975), the Ninth Circuit affirmed its agreement with the Fourth Circuit that the "right-to-control" test is an important and appropriate factor to assess the union's object under the secondary boycott provisions of the Act, and that the control doctrine is well within this Court's reference to "all the surrounding circumstances" in *National Woodwork*. The Ninth Circuit also rejected the argument that *National Woodwork* authorizes all union conduct undertaken to enforce "work preservation" clauses. The court stated (514 F2d at 438):

> We believe *National Woodwork* must be limited by the right-to-control doctrine. A union's right to enforce a work preservation clause against an employer may extend only to work which is his to assign. When it is applied to work beyond the employer's power to give, a work preservation clause necessarily embodies a prohibited secondary objective.[7]

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[7] This opinion reversed the Board's decision in the case and accepted the view of the Law Judge and dissenting Member Kennedy. See 207 NLRB 711 (1974). The Board has subsequently adopted the decision of the Ninth Circuit. *Southern California Pipe Trades, etc. (Assoc. Gen. Contractors of Cal. Inc.)*, 219 NLRB No. 53 (1975).

The court's decision is fully consistent with its earlier holding in *Western Monolithics Concrete Prods. Inc.* v. *NLRB*, 446 F.2d 522 (9th Cir. 1971). There, the court held only that the Board incorrectly applied the right of control test to permit a labor organization to pressure a general contractor who employed no members of the pressuring union and had no collective bargaining with the union in order to force the general to cease doing business with the subcontractor. That portion of the Board's decision which held, like the instant case and *Associated General Contractors, supra*, that the union unlawfully pressured the primary employer (the subcontractor) because the primary had no control over the type of fireplaces to be installed at the jobsite was "not on review and therefore remain[s] undisturbed." 446 F.2d at 527.

The Court of Appeals acknowledged these conflicting opinions and made no attempt to distinguish or reconcile them with its reaffirmation of its "previous holding that the [Board's] test impermissibly expands the congressionally intended scope of Section 8(b)(4)(B)." 521 F.2d at 889.[8] Since this decision squarely presents a conflict in the circuits with respect to an important question of statutory interpretation in an area vital to the ongoing administration of the Act,[9] review by his Court is appropriate.

3. The propriety of the Board's control doctrine has not previously been considered by the Court. In *National Woodwork supra*, the Court expressly held that this question was not then before it for review. 386 U.S. at 616-17 n.3. In other labor law cases the Court has granted petitions which, as here, present important and significant issues expressly left unresolved in earlier decisions. Compare *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 594-5 (1969) with *Linden Lumber* v. *NLRB*, 419 U.S. 301, 302 (1974); and *NLRB* v.

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The Board has now held in agreement with *Western Monolithics, supra*, that a union may not coercively pressure an employer to enforce a work preservation clause if that employer does not employ members of the union and has no collective bargaining agreement with that union. *Local 112 Carpenters (Summit Valley Inds. Inc.), supra*. This holding parallels the reasoning in *Connell Constr. Co.* v. *Plumbers Local 100, supra*, where the Court limited construction union pressures to obtain lawful "hot cargo" clauses to employers party to a collective bargaining relationship. 421 U.S. at 633.

[8] The Court of Appeals referred to its earlier decisions in *Local 742, Carpenters* v. *NLRB*, 444 F2d 895, cert denied, 404 U.S. 986 (1971); and *Local 636, Plumbers* v. *NLRB*, 430 F2d 906 (1970).

[9] *E.g., Carpenters Local 112 (Summit Valley Inds. Inc.), supra; Elec. Wkrs., Local 501 (Assoc. General Contractors of Conn. Inc.)*, 216 NLRB No. 73 (1975); *Elec. Wkrs., Local 995 (Saia Elec. Inc.)*, 201 NLRB 259 (1973).



*Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 192-3, n.30 (1967) with *NLRB* v. *Boeing Co.*, 412 U.S. 67, 72-3 (1973). This petition presents another instance where additional guidance from the Court on a legal question left open in *National Woodwork* is now essential and timely.

4. The instant case also provides the Court with a timely opportunity to reconsider *National Woodwork* in light of subsequent events. Compare *Boys Markets* v. *Retail Clerks*, 398 U.S. 235, 241 (1970); cf. *NLRB* v. *Weingarten, Inc., supra*, 420 U.S. at 266. Commentators have noted the adverse impact "work preservation" claims have upon the nation's housing market, and upon technological innovations in production methods. See generally Brinker and Taylor, "The Secondary Boycott Maze," 25 Lab. L.J. 418, 427 (1974); Petro, "Unions, Housing Costs, and the National Labor Policy," 32 Law & Contemp. Prob. 319, 322 *et seq.* (1968). Economists have also concluded that the work preservation concept is not based upon valid economic theory and does not actually have the effect of preserving jobs for union members.[10] These studies and conclusions by experts in non-legal disciplines were not before the *National Woodwork* Court. The knowledge now available, well advanced beyond

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[10] Myers and DePodwin, "The Economic Personality of the Construction Industry and the Need for Technological Change" (New York 1973); and Meyers and DePodwin, "A Theoretical Analysis of the Work Preservation Concept" (New York 1973).

The necessity for a coordinated interrelationship between national labor and economic policies has also been persuasively set forth in Wellington, *Labor and the Legal Process*, 298-333 (Yale 1968). Cf. *Southern S.S. Co.* v. *NLRB*, 316 U.S. 31, 47 (1942) (Labor Board must take account of other important congressional policies in administering labor policy).

that existent in 1967, may provide a basis for reconsideration of the conclusions reached in *National Woodwork*. Compare *Brown* v. *Bd. of Education*, 347 U.S. 483, 494, n.11 (1954). A more reasonable and preferable resolution of the conflicting interests accommodated by national labor policy may be obtained by substituting the orderly judicial process for redress of alleged violations of work preservation clauses for the adverse economic consequences now caused by job-site strikes and work stoppages. *E.g., Local 48, Sheet Metal Wkrs.* v. *Hardy Corp.*, 332 F.2d 682 (5th Cir. 1964).

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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# APPENDIX

## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*) are as follows:

> Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * *
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: * * *
>
> *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not

have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods or not to perform any services, at the establishment of the employer engaged in such distribution;

Sec. 8(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided,* That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection (e) and section 8 (b)(4)(B) the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further,* That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.